

Message Text

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ORIGIN AGRE-00

INFO OCT-01 NEA-11 ISO-00 EB-08 AID-05 COME-00 IO-13
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DRAFTED BY USDA/OGSM:MR. WALLACE:SEB
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-----062887 150120Z /70

O 150026Z JUN 78
FM SECSTATE WASHDC
TO AMEMBASSY CAIRO IMMEDIATE

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E.O. 11652: N/A

TAGS: EAGR, EAID, EG

SUBJ: TITLE I, PL 480 WHEAT FLOUR SHIPMENT ON M/S
EVANGELISTRIA

REF: A) TOFAS 164; B) CAIRO 15865; C) TOFAS 172

1. APPRECIATE EMBASSY EFFORTS TO EXPEDITE RESOLUTION OF
DISPUTE BETWEEN ESTRAM AND PILLSBURY OVER SUBJECT
SHIPMENT. UNDERSTAND THAT MATTER STILL AT STANDSTILL.

2. FOLLOWING MAY ASSIST YOU IN FURTHER APPROACHES TO
MINISTRY OF SUPPLY.

3. PILLSBURY, IN LETTER DATED JUNE 7 TO MINISTER EL-
HAHAL OF EGYPTIAN EMBASSY MADE FOLLOWING PROPOSAL:

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QUOTE: A. GENERAL AUTHORITY FOR SUPPLY COMMODITIES,
(ESTRAM), WOULD IMMEDIATELY INSTRUCT MORGAN GUARANTY
BANK TO PAY \$1,726,278.33 TO THE PILLSBURY COMPANY
AGAINST THE DOCUMENTS NOW IN THEIR POSSESSION, INCLUDING
BILLS OF LADING DATED APRIL 7, 1978, WHICH WERE DELIVERED
BY THE PILLSBURY COMPANY TO MORGAN GUARANTY BANK.

B. THE PILLSBURY COMPANY WOULD EXTEND ITS PERFORMANCE BOND

IN THE AMOUNT OF \$489,436.00 FOR THE PERIOD OF 12 MONTHS FROM TODAY. ESTRAM WOULD AGREE NOT TO DRAW DOWN THIS BOND EXCEPT IN COLLECTION OF ANY ARBITRATION AWARD PURSUANT TO ARBITRATION UNDER THIS PROPOSAL.

C. THE PILLSBURY COMPANY AND ESTRAM WOULD AGREE TO JOINTLY ARBITRATE THE PILLSBURY COMPANY'S PERFORMANCE UNDER ITS CONTRACT WITH ESTRAM AND ITS LIABILITY, IF ANY, FOR FUMIGATION EXPENSES, SIEVING EXPENSES AND DAMAGES OF LOST CARGO DUE TO INFESTATION OF THE FLOUR SUPPLIED UNDER THIS CONTRACT. ESTRAM WOULD AGREE TO JOIN THE OWNERS AND/OR DISPONENT OWNERS OF THE M/V EVANGELISTRIA AS PARTIES TO THIS ARBITRATION FOR DETERMINATION OF THE LIABILITY ON THESE CLAIMS. UNQUOTE.

4. UNDERSTAND MINISTRY OF SUPPLY STILL INSISTING RESOLUTION ALONG LINES NOTED ITEM 4(A) REF A.

5. AS WE UNDERSTAND IT, PILLSBURY HAS PRESENTED ALL DOCUMENTS REQUIRED UNDER THEIR CONTRACT AND THE PL 480 REGULATIONS, INCLUDING CLEAN QUALITY CERTIFICATES ISSUED BY INDEPENDENT SURVEYOR AND LABORATORY SELECTED BY MUTUAL AGREEMENT BETWEEN BUYER AND SELLER. CERTIFICATES LIMITED OFFICIAL USE

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INDICATE QUALITY PER CONTRACT ON DELIVERY AT BEAUMONT. BILLS OF LADING, HOWEVER, CONTAIN CLAUSE INDICATING CARGO WAS FUMIGATED WITH METHYL BROMIDE, BUT NO REFERENCE TO INFESTATION.

6. USDA/FGIS CONFIRMED PRESENCE OF INSECTS ON THE BAGS AT REQUEST OF VESSEL AGENTS. VESSEL CAPTAIN COMPLETED LOADING FLOUR THEN ORDERED FUMIGATION. LOCAL PEST CONTROL FIRM WILLING TO CERTIFY TO EFFECTIVENESS OF FUMIGATION. IT SHOULD BE NOTED, HOWEVER, THAT VESSEL WAS ALREADY PARTIALLY LOADED WHEN INSPECTION REQUESTED, AND LOADING WAS COMPLETED WITH FULL KNOWLEDGE BY CAPTAIN OF PRESENCE OF INSECTS ON THE BAGS.

7. NEITHER THE EGYPTIAN EMBASSY NOR PILLSBURY HAS BEEN ABLE TO SPECIFICALLY STATE TO USDA THE TERM OR CONDITION OF THE COMMODITY LETTER OF CREDIT THAT HAS NOT BEEN SATISFIED TO JUSTIFY EGYPTIAN UNWILLINGNESS TO MAKE THE \$1.7 MILLION PAYMENT IN FULL AND RELY ON RESULTS OF ARBITRATION TO DETERMINE DAMAGES, IF ANY, TO BE COLLECTED FROM THE PERFORMANCE GUARANTEE.

8. IT SEEMS QUITE CLEAR FROM THE WORDING OF THE TENDER (CONTRACT) TERMS THAT THE PERFORMANCE GUARANTEE (WHICH PILLSBURY OFFERS TO EXTEND FOR A YEAR IF NECESSARY) IS

THE INSTRUMENT INTENDED TO ENABLE THE BUYER TO RECOVER ANY DAMAGES OR EXPENSES HE HAS INCURRED OR WILL INCUR QUOTE: BECAUSE SELLER HAS NOT PERFORMED THE TERMS AND CONDITIONS OF THIS CONTRACT, INCLUDING WITHOUT LIMITATION: SELLER HAS FAILED TO MAKE SHIPMENT OR DELIVERY IN ACCORDANCE WITH CONTRACT TERMS AND CONDITIONS - SELLER HAS FAILED TO MAKE DELIVERY ACCORDING TO THE TERMS AND CONDITIONS APPLICABLE TO QUALITY, GRADE, QUANTITY AT THE TIME AND PLACE OF DELIVERY - OR SELLER HAS FAILED TO PERFORM RESULTING IN DELAYS GIVING RISE TO DEMURRAGE LIMITED OFFICIAL USE

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OR DETENTION CLAIMS AT THE LOADPORT. UNQUOTE.

9. ON THE BASIS OF NORMAL COMMERCIAL SALES ON FAS DELIVERY TERMS, THERE COULD BE NO QUESTION IN THIS CASE THAT PILLSBURY FULLY PERFORMED ITS CONTRACT AS FAR AS DOCUMENTS ARE CONCERNED. HOWEVER, UNDER PL 480, THE BILL OF LADING IS A REQUIRED PAYMENT DOCUMENT. THIS, IN VIEW OF CLAUSED LADING, RAISES A QUESTION THAT CAN ONLY BE SETTLED BY ARBITRATION OR LITIGATION. THUS, USDA CANNOT GIVE ASSURANCE NOTED PARA 4 REF C.

10. CONSIDERING ALL THE ABOVE AND IN VIEW OF LARGE PERFORMANCE BOND AVAILABLE TO SATISFY POSSIBLE CLAIMS AND EXTENSION PERIOD PILLSBURY WILLING TO GRANT, WE WOULD HOPE MINISTRY OF SUPPLY WOULD AUTHORIZE ESTRAM PROCEED ALONG LINES PROPOSED BY PILLSBURY. THIS WOULD BE ESPECIALLY TRUE IF FURTHER FUMIGATION AND SIFTING IS NOT NECESSARY.

11. REQUEST EMBASSY ON URGENT BASIS APPROACH MINISTER OF SUPPLY BRING MATTER TO PROMPT SOLUTION. CHRISTOPHER

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Secure: OPEN
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